

§ 2613. Authority for issuance and amendment of plan

To effectuate the declared policy of this chapter, the Secretary shall, subject to the provisions of this chapter, issue and from time to time amend, orders applicable to handlers and importers and shall have authority to issue orders authorizing the collection of assessments on potatoes handled or imported under the provisions of this chapter, and to authorize the use of such funds to provide research, development, advertising, and promotion of potatoes in a manner prescribed in this chapter. Any order issued by the Secretary under this chapter shall hereinafter in this chapter be referred to as a "plan". Any such plan shall be applicable to potatoes produced in the 50 States of the United States and in foreign countries, if importers are subject to a plan and such potatoes are imported into the United States.

(Pub. L. 91-670, title III, §304, Jan. 11, 1971, 84 Stat. 2042; Pub. L. 101-624, title XIX, §1938, Nov. 28, 1990, 104 Stat. 3866.)

AMENDMENTS

1990—Pub. L. 101-624 substituted "handlers and importers" for "persons engaged in the handling of potatoes (hereinafter referred to as handlers)", inserted "or imported", substituted "50" for "forty-eight contiguous", and inserted before period at end "and in foreign countries, if importers are subject to a plan and such potatoes are imported into the United States".

§ 2614. Notice and hearings

When sufficient evidence is presented to the Secretary by interested persons, or whenever the Secretary has reason to believe that a plan will tend to effectuate the declared policy of this chapter, he shall give due notice and opportunity for a hearing upon a proposed plan. Such hearing may be requested by any interested person, including the Secretary, when the request for such hearing is accompanied by a proposal for a plan.

(Pub. L. 91-670, title III, §305, Jan. 11, 1971, 84 Stat. 2042; Pub. L. 101-624, title XIX, §1939, Nov. 28, 1990, 104 Stat. 3866.)

AMENDMENTS

1990—Pub. L. 101-624 substituted "interested persons" for "potato producers" in first sentence and "by any interested person, including the Secretary" for "by potato producers or by any other interested person or persons, including the Secretary" in second sentence.

§ 2615. Finding and issuance of plan

After notice and opportunity for hearing, the Secretary shall issue a plan if he finds, and sets forth in such plan, upon the evidence introduced at such hearing, that the issuance of such plan and all the terms and conditions thereof will tend to effectuate the declared policy of this chapter.

(Pub. L. 91-670, title III, §306, Jan. 11, 1971, 84 Stat. 2042.)

§ 2616. Regulations

The Secretary is authorized to make such regulations with the force and effect of law, as may

be necessary to carry out the provisions of this chapter and the powers vested in him by this chapter.

(Pub. L. 91-670, title III, §307, Jan. 11, 1971, 84 Stat. 2042.)

§ 2617. Required terms and conditions of plans

Any plan issued pursuant to this chapter shall contain the following terms and conditions:

(a) National Potato Promotion Board; establishment; powers and duties

Providing for the establishment by the Secretary of a National Potato Promotion Board (hereinafter referred to as "the board") and for defining its powers and duties, which shall include powers—

- (1) to administer such plan in accordance with its terms and conditions;
- (2) to make rules and regulations to effectuate the terms and conditions of such plan;
- (3) to receive, investigate, and report to the Secretary complaints of violations of such plan; and
- (4) to recommend to the Secretary amendments to such plan.

(b) Membership of board

Providing that the board shall be composed of representatives of producers and the public appointed by the Secretary from nominations submitted in accordance with this subsection. If importers are subject to a plan, the board shall also include up to 5 representatives of importers, appointed by the Secretary from nominations submitted by importers in such manner as may be prescribed by the Secretary. Representatives of producers shall be nominated by producers in such manner as may be prescribed by the Secretary. Public representatives shall be nominated by the board in such manner as may be prescribed by the Secretary. If producers or importers fail to select nominees for appointment to the board, or the board fails to nominate public representatives, the Secretary may appoint persons on the basis of representation as provided for in such plan. The requirement for inclusion of public representatives on the board shall not be subject to producer approval, or to importer approval when importers are subject to a plan, in a referendum.

(c) Compensation and expenses of board members

Providing that board members shall serve without compensation, but shall be reimbursed for reasonable expenses incurred in performing their duties as members of the board.

(d) Budget; preparation and submission

Providing that the board shall prepare and submit to the Secretary for his approval a budget, on a fiscal period basis, of its anticipated expenses and disbursements in the administration of the plan, including probable costs of research, development, advertising, and promotion.

(e) Assessment rate per poundage handled; limitation

Providing that the board shall recommend to the Secretary and the Secretary shall fix the assessment rate at not more than 2 cents per one

hundred pounds of potatoes handled; except that if approved by producers, and importers when importers are subject to a plan, pursuant to section 2623 of this title, the rate of assessment shall not exceed one-half of 1 per centum of the immediate past ten-calendar-year United States average price received for potatoes by growers as reported by the Department of Agriculture.

(f) Restrictions

Providing that—

(1) funds collected by the board shall be used for research, development, advertising, or promotion of potatoes and potato products and such other expenses for the administration, maintenance, and functioning of the board, as may be authorized by the Secretary, including any referendum and administrative costs incurred by the Department of Agriculture under this chapter: *Provided*, That the provision for payment to the Department of Agriculture for any referendum and administrative costs so incurred shall not be subject to producer approval, or importer approval when importers are subject to a plan, in a referendum;

(2) no advertising or sales promotion program shall make any reference to private brand names or use false or unwarranted claims in behalf of potatoes or their products or false or unwarranted statements with respect to the attributes or use of any competing products; and

(3) no funds collected by the board shall in any manner be used for the purpose of influencing governmental policy or action, except as provided by subsection (a)(4) of this section.

(g) Research, development, advertising or promotion programs or projects; development and submission by board; approval by Secretary

Providing that the board shall, subject to the provisions of subsections (e) and (f) of this section, develop and submit to the Secretary for his approval any research, development, advertising or promotion programs or projects, and that any such program or project must be approved by the Secretary before becoming effective.

(h) Contract authority of board; funds for payment of cost

Providing the board with authority to enter into contracts or agreements, with the approval of the Secretary, for the development and carrying out of research, development, advertising or promotion programs or projects, and the payment of the cost thereof with funds collected pursuant to this chapter.

(i) Recordkeeping; reports for accounting; receipts and disbursements; audit report

Providing that the board shall maintain books and records and prepare and submit to the Secretary such reports from time to time as may be prescribed for appropriate accounting with respect to the receipt and disbursement of funds entrusted to it and cause a complete audit report to be submitted to the Secretary at the end of each fiscal period.

(Pub. L. 91-670, title III, §308, Jan. 11, 1971, 84 Stat. 2042; Pub. L. 97-244, §2, Aug. 26, 1982, 96 Stat. 310; Pub. L. 98-171, §2(a), Nov. 29, 1983, 97

Stat. 1117; Pub. L. 101-624, title XIX, §1940, Nov. 28, 1990, 104 Stat. 3866.)

AMENDMENTS

1990—Subsec. (b). Pub. L. 101-624, §1940(1), inserted after first sentence “If importers are subject to a plan, the board shall also include up to 5 representatives of importers, appointed by the Secretary from nominations submitted by importers in such manner as may be prescribed by the Secretary.”, inserted “or importers” after “If producers”, and inserted “, or to importer approval when importers are subject to a plan,” after “approval” in last sentence.

Subsec. (e). Pub. L. 101-624, §1940(2), substituted “2 cents” for “one cent” and inserted “, and importers when importers are subject to a plan,” after “producers”.

Subsec. (f)(1). Pub. L. 101-624, §1940(3), inserted “, or importer approval when importers are subject to a plan,” after “producer approval” in proviso.

Subsecs. (g) to (j). Pub. L. 101-624, §1940(4), redesignated subsecs. (h) to (j) as (g) to (i), respectively, and struck out former subsec. (g) which read as follows: “Providing that, notwithstanding any other provisions of this chapter, any potato producer against whose potatoes any assessment is made and collected under authority of this chapter and who is not in favor of supporting the research and promotion program as provided for under this chapter shall have the right to demand and receive from the board a refund of such assessment: *Provided*, That such demand shall be made personally by such producer in accordance with regulations and on a form and within a time period prescribed by the board and approved by the Secretary, but in no event less than ninety days, and upon submission of proof satisfactory to the board that the producer paid the assessment for which refund is sought, and any such refund shall be made within sixty days after demand therefor.”

1983—Subsec. (b). Pub. L. 98-171, §2(a)(1), inserted “The requirement for inclusion of public representatives on the board shall not be subject to producer approval in a referendum.”

Subsec. (e). Pub. L. 98-171, §2(a)(2), amended subsec. (e) generally, substituting requirement that the Secretary fix “the assessment rate at not more than one cent per one hundred pounds of potatoes handled” for “the assessment rate required for such costs as may be incurred under subsection (d) of this section, including any referendum and administrative costs estimated to be incurred by the United States Department of Agriculture under this chapter” and provision “except that if approved by producers pursuant to section 2623 of this title, the rate of assessment shall not exceed” for “*Provided*, That the rate of assessment for fiscal year 1982 and each fiscal year thereafter shall not exceed”.

Subsec. (f)(1). Pub. L. 98-171, §2(a)(3), inserted “*Provided*, That the provision for payment to the Department of Agriculture for any referendum and administrative costs so incurred shall not be subject to producer approval in a referendum”.

1982—Subsec. (b). Pub. L. 97-244, §2(1), substituted provisions that the board be composed of representatives of producers and the public appointed by the Secretary from nominations submitted in accordance with this subsection, that representatives of producers be nominated by producers in such manner as may be prescribed by the Secretary, that public representatives be nominated by the board in such manner as may be prescribed by the Secretary, and that, if producers fail to select nominees for appointment to the board or the board fails to nominate public representatives, the Secretary may appoint persons on the basis of representation as provided for in such plan for provisions that the board could be composed of representatives of producers selected by the Secretary from nominations made by producers in such manner as might be prescribed by the Secretary and that, in the event producers failed to select nominees for appointment to the board, the Sec-

retary was to appoint producers on the basis of representation provided for in such plan.

Subsec. (e). Pub. L. 97-244, §2(2), substituted provisions that the assessment rate include any referendum and administrative costs estimated to be incurred by the Department of Agriculture under this chapter, but that the assessment rate for fiscal year 1982 and each fiscal year thereafter not exceed one-half of 1 per centum of the immediate past ten calendar year United States average price received for potatoes by growers as reported by the Department of Agriculture, for provisions that the assessment rate could not exceed 1 cent per hundred pounds of potatoes handled.

Subsec. (f)(1). Pub. L. 97-244, §2(3), substituted "as may be authorized by the Secretary, including any referendum and administrative costs incurred by the Department of Agriculture under this chapter" for "as may be authorized by the Secretary".

§ 2618. Permissive terms and conditions of plans

Any plan issued pursuant to this chapter may contain one or more of the following terms and conditions:

(a) Exemptions

Providing authority to exempt from the provisions of the plan potatoes used for nonfood uses, and authority for the board to require satisfactory safeguards against improper use of such exemptions.

(b) Handler payment and reporting schedules

Providing for authority to designate different handler payment and reporting schedules to recognize differences in marketing practices and procedures utilized in different production areas.

(c) Advertisement and sales promotion programs or projects

Providing for the establishment, issuance, effectuation, and administration of appropriate programs or projects for the advertising and sales promotion of potatoes and potato products and for the disbursement of necessary funds for such purposes: *Provided, however*, That any such program or project shall be directed toward increasing the general demand for potatoes and potato products: *And provided further*, That such promotional activities shall comply with the provisions of section 2617(f) of this title.

(d) Research and development projects and studies for marketing and utilization of potatoes

Providing for establishing and carrying on research and development projects and studies to the end that the marketing and utilization of potatoes may be encouraged, expanded, improved, or made more efficient, and for the disbursement of necessary funds for such purposes.

(e) Reserve funds; accumulation; limitation

Providing for authority to accumulate reserve funds from assessments collected pursuant to this chapter, to permit an effective and continuous coordinated program of research, development, advertising, and promotion in years when the production and assessment income may be reduced: *Provided*, That the total reserve fund does not exceed the amount budgeted for two years' operation.

(f) Foreign markets; sales development and expansion

Providing for authority to use funds collected herein, with the approval of the Secretary, for

the development and expansion of potato and potato product sales in foreign markets.

(g) Assessment; refund

Providing that any potato producer or importer against whose potatoes any assessment is made and collected under authority of this chapter and who is not in favor of supporting the research and promotion program as provided for under this chapter shall have the right to demand and receive from the board a refund of such assessment. Such demand shall be made personally by such producer or importer in accordance with regulations and on a form and within a time period prescribed by the board and approved by the Secretary, but in no event less than 90 days, and upon submission of proof satisfactory to the board that the producer or importer paid the assessment for which refund is sought, and any such refund shall be made within 60 days after demand therefor.

(h) Assessment authority

Providing for authority to assess imports of tablestock, frozen, or processed potatoes for ultimate consumption by humans and seed potatoes into the United States.

(i) Incidental and necessary terms and conditions

Terms and conditions incidental to and not inconsistent with the terms and conditions specified in this chapter and necessary to effectuate the other provisions of such plan.

(Pub. L. 91-670, title III, §309, Jan. 11, 1971, 84 Stat. 2044; Pub. L. 101-624, title XIX, §1941, Nov. 28, 1990, 104 Stat. 3867.)

AMENDMENTS

1990—Subsecs. (g) to (i). Pub. L. 101-624 added subsecs. (g) and (h) and redesignated former subsec. (g) as (i).

§ 2619. Assessments

(a) Collection and payment; recordkeeping; limitation

(1) Each handler designated by the board, pursuant to regulations issued under the plan, to make payment of assessments shall be responsible for payment to the board, as it may direct, of any assessment levied on potatoes; and such handler may collect from any producer or deduct from the proceeds paid to any producer, on whose potatoes such assessment is made, any such assessment required to be paid by such handler. Such handler shall maintain a separate record with respect to each producer for whom potatoes were handled, and such records shall indicate the total quantity of potatoes handled by him including those handled for producers and for himself, shall indicate the total quantity of potatoes handled by him which are included under the terms of a plan as well as those which are exempt under such plan, and shall indicate such other information as may be prescribed by the board. To facilitate the collection and payment of such assessments, the board may designate different handlers or classes of handlers to recognize differences in marketing practices or procedures utilized in any State or area. No more than one such assessment shall be made on any potatoes.